

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FOREMOST INSURANCE COMPANY

PLAINTIFF

VS.

CIVIL ACTION NO. 5:08-cv-152 (DCB) (JMR)

CONNIE STRICKLAND

DEFENDANT

ORDER

This cause is before the Court on the defendant Connie Strickland's motion to dismiss **(docket entry 3)** or to transfer **(docket entry 6)**. Having carefully considered the motion and response, the memoranda and the applicable law, and being fully advised in the premises, the Court finds as follows:

Foremost Insurance Company ("Foremost"), a Michigan insurance company, filed this declaratory judgment action against the defendant Connie Strickland ("Strickland"), a Mississippi citizen, in connection with a fire that occurred at Strickland's residence on July 6, 2007. Foremost insured Strickland's property under Foremost Policy No. 103-0667531406, which provided coverage in the amount of \$68,802 for the dwelling, \$21,100 in coverage for personal property, \$13,760 in coverage for additional living expenses, and \$3,600 in coverage for other structures, for a total of \$107,262.00. On September 19, 2007, in accordance with Miss. Code Ann. § 83-13-9 and the terms of the policy, Foremost paid the amount of \$55,038.05 to Strickland's mortgagee, Green Tree Servicing LLC ("Green Tree"), a loss payee and an insured under the

Foremost policy.

Strickland submitted a sworn Proof of Loss on October 3, 2007, for policy limits. After an investigation, Foremost concluded that sufficient grounds existed to deny Strickland's claim, and it filed the instant declaratory judgment action.

In her motion, Strickland contends that although there is diversity of citizenship between the parties, the amount in controversy does not exceed \$75,000, and this case should be dismissed or transferred to the Circuit Court of Warren County, Mississippi. According to Strickland, the \$55,038.05 should be subtracted from the \$107,262.00, yielding a total of \$52,223.95. Strickland denies that Foremost has a right of subrogation for the amount paid to Green Tree.

The Fifth Circuit has held that when an insurer files a declaratory judgment action against its insured, the amount in controversy is the amount of the right or interest the insurer seeks to protect or the insurer's potential liability under the policy. St. Paul Reinsurance Company, Ltd. v. Greenberg, 134 F.3d 1250, 1253 (5th Cir. 1998). Here, the total right to be protected or total potential liability is \$107,262, the total amount of coverage under the policy. This includes the lien holder's interest of \$55,038.05, to which Foremost is subrogated by virtue of Miss. Code Ann. 83-13-9 and the insurance policy, as well as its right to equitable subrogation. The defendant's motion to dismiss

or to transfer shall therefore be denied. Accordingly,

IT IS HEREBY ORDERED that the defendant Connie Strickland's motion to dismiss **(docket entry 3)** or to transfer **(docket entry 6)** is DENIED.

SO ORDERED, this the 26th day of March, 2008.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE